

# **EXHIBIT C**

Proceedings

269a

MAY 9, 1985

SUPREME COURT OF THE STATE OF NEW YORK  
TRIAL TERM PART 67, COUNTY OF THE BRONX

PEOPLE OF THE STATE OF NEW YORK against ALAN NEWTON,

Defendant

INDICTMENT NO. 2441/1984

BEFORE: HON. JEROME L. REINSTEIN, J u s t i c e.

APPEARANCES: ( Same as previously noted.)

\* \* \*

COURT CLERK: People of the State of New  
York versus Alan Newton. Let the record reflect  
the presence in the courtroom of counsel for  
the People, defense counsel and defendand. Con-  
tinued Wade Hearing.

THE COURT: Miss Freund, call your next  
witness.

MS. FREUND: At this time the People call  
to the stand Miss Aurea Gonzalez.

COURT CLERK: Please note on the record  
that the presence in the courtroom of the official  
Spanish interpreter.

A U R E A U G O N Z A L E Z, called as a witness on  
behalf of the People, having first been sworn  
through the Official Spanish interpreter, testified

through the Official Spanish interpreter as follows:

COURT OFFICER: Witness gives her name as Aurea G-o-n-z-a-l-e-z, a resident of Westchester County.

THE COURT: You may inquire. I assume there are no other witnesses in the courtroom?

MS. FREUND: Correct, your Honor.

MR. SEGAL: Just one second.

THE COURT: Yes.

(Discussion held off the record between the Court and counsel.)

DIRECT EXAMINATION

BY MS. FREUND:

Q Good morning, Miss Gonzalez. Miss Gonzalez prior to coming to court you told me that you had a headache and that it was a bad headache. If at any time you wish to stop for -- if at any time you wish to rest will you please tell us?

A Okay.

Q Miss Gonzalez I ask you to remember back to a particular Saturday morning, June 23rd, 1984, at approximately four o'clock in the morning. At that time did a woman come into the store.

A Yes.

Gonzalez - People - Direct -

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1 Q And was this a woman that you had seen before?

2 A Yes.

3 Q And at that time did a gentleman also enter the  
4 store?

5 A Yes. It's true.

6 Q And had you ever seen that man before?

7 A No.

8 Q I'm going to direct your attention, Miss Gonzalez,  
9 to the 27th of June, 1984, at approximately four o'clock  
10 in the afternoon at a superette located at 180th Street  
11 and Third Avenue. At approximately four o'clock that after-  
12 noon were you at the store?

13 A Yes.

14 Q And did somebody come into the store asking you  
15 to view photographs?

16 A Yes.

17 Q And did you --

18 THE COURT: What was the address of the store?

19 THE WITNESS: 4383 of Third Avenue.

20 Q And did you view photographs?

21 A Forty three seventy three.

22 Q And did you view photographs at that time, Miss  
23 Gonzalez?

24 A Yes.

Gonzalez - People - Direct -

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Q And Miss Gonzalez can you tell us who was there  
-- withdrawn.

Can you tell us who showed you these photographs?

A A detective.

Q I am going to show you that which has been marked  
People's 3, I believe.

A Is 4378. Excuse me. I'm sorry. Forgive me.  
I forgot.

COURT OFFICER: (Handing Exhibit to witness.)

Q Do you recognize that, People's 3?

A If I recognize what?

Q Do you recognize that which you are looking at?

A Uh-huh.

Q Are these the photographs that were shown to you  
by the detective at four o'clock that afternoon?

A Yes.

Q Did you select a photograph from those photographs?

A Yes.

Q Can you indicate for us which photograph it was  
that you selected?

A That one, that is here, the two (indicating).

Q Can you please tell us what if anything the detec-  
tive said to you before you looked at the photographs?

A How is that, forgive me.

Gonzalez - People - Direct -

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Q What did the detective say to you before you looked at the photographs?

A He asked me my name. He asked me if I work there at the bodega. I told him yes.

Q I am going to interrupt you for a moment, Miss Gonzalez. Did the detective ask you to do something with these photographs?

A How is that?

Q Did the detective ask you to do anything with these photographs?

A Like something like what?

Q What if anything did the detective say to you before you looked at these photographs?

A Well, he told me that if something happened during the night. I told him not with me. There was no problem that only that person had arrived, a man, and a woman. More or less at four o'clock in the morning. He arrived nasty. Asked me for a pack of cigarettes. I gave it to him. She had arrived first, the lady. She asked me for a beer. She greeted me and she asked me for a beer. I told her that it was in the back part.

THE COURT: We're not interested in that at the moment.

When the officer showed you the pictures

Gonzalez - People - Direct -

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what did he say to you with reference to the pictures?

THE WITNESS: That if someone among those appeared like the person that had come in that he was going to show me these pictures.

Q I'm going to ask you to remember back to another date and that date is the following day, the 28th of June, 1984, at approximately one o'clock in the afternoon at the 48th Precinct. Do you view a lineup at approximately one o'clock in the afternoon?

A Yes, more or less at that time.

Q And how did you get to the precinct to view this lineup?

A How did I get?

Q Yes. How did you get to the precinct?

A One detective picked me up in the store and another took me to the place.

Q Did anybody speak to you about the lineup before you looked at it?

A Well, they explained to me what was going to be done. If the people that were there there was a person that had gone to the store that evening, the evening -- that evening, you know, in the early morning hours.

Q And when you viewed that lineup were you able

Gonzalez - People - Direct -

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1  
2 to select a number from that lineup?

3 A That if I could select a number?

4 Q Did you select a number from that lineup?

5 A I selected the person that had gone to the store  
6 or said the man that had gone to the store.

7 Q And do you remember the number of the person in  
8 that lineup that had gone to that store?

9 A Number two.

10 Q I'm going to ask you to look at that which has  
11 been marked People's 4, and ask you if you recognize that  
12 photograph?

13 A This one here I can't see it very well.

14 Q Miss Gonzalez --

15 A It is the same one, the number two, yes.

16 Q Miss Gonzalez what did the detective say to you  
17 if anything, about the lineup before you saw it?

18 A What the detective said when he showed me the  
19 lineup.

20 Q What if anything was explained to you about the  
21 lineup before you saw it?

22 A When they told me that if I was going to see in  
23 that lineup I could look inside and I could see the people  
24 but that the ones that were inside were not able to see  
25 me and not to be fearful of anything.



Gonzalez - People - Direct -

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Q What did you see when you looked at that lineup?

A I saw from five to six men like this (indicating)  
in line with a number like this in their hand (indicating).

Q Miss Gonzalez do you see the person in the Court  
today that was in the store on the morning of June 23rd,  
the morning that the other lady was in the store?

A That if I see what?

Q Do you see the man in Court today, the man that  
was in the store the early morning of June 23rd?

A No.

MS. FREUND: Thank you, Miss Gonzalez.

THE COURT: Mr. Segal.

MS. FREUND: Your Honor I have one more  
question.

THE COURT: All right.

MS. FREUND: In one moment.

Q Miss Gonzalez you told us that you do not see  
the man in court that was in the store the morning of June  
23rd. If you saw the man that was in the store that morning  
today do you know if you would be able to identify him?

A I believe so.

MS. FREUND: No further questions.

THE COURT: Mr. Segal.

CROSS EXAMINATION  
BY MR. SEGAL:

Gonzalez - People - Gross

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Q Miss Gonzalez on June 23rd, 1984 when you were talking to this woman -- withdraw that.

Do you speak Spanish, Miss Gonzalez?

A English a little bit.

Q The woman who came into the store do you know that woman?

A I knew her by sight but not by name.

Q And the man who came into the store you did not know him; right?

A No.

Q Do you remember how long --

MS. FREUND: I'm going to object to this line of questioning, your Honor. There has been no indication of suggestiveness so far as to police procedure. I would ask Mr. Segal to contain himself to questions about the photo array and the lineup.

THE COURT: According to Bamberger I think I have to go into independent source. Overruled.

Q How long was the man in the store?

A How long the man in the store?

Q Yes.

A About two minutes.

Q And did you see him --

THE COURT: I didn't hear the minutes.

Gonzalez - People - Cross

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THE INTERPRETER: About two minutes, sir.

Q Were you looking at the face for this two minutes?

A Yes.

Q And did the man ever walk to the back of the store?

A Out, he came in and he went out. He bought and then he went out.

Q So he didn't stay in the store for two minutes; did he?

A Yes, because I was taking care of the other lady.

Q Okay and was he up at the front where you were the whole time?

A Yes.

Q When the man left the store did the woman stay in the store?

A She stayed until she paid but then she went out right away.

Q There came a time when the police showed up, showed you a group of photos; is that true?

A Yes, it is true.

Q And they showed it to you at the supermarket; is that right?

A In the bodega in the grocery store.

Q And how many policemen showed it to you?

A There was two detectives.

Gonzalez - People - Cross

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1 Q And did they tell you --

2 A That went there two detectives.

3 Q And did they call you before they came over?

4 A No, they had gone over to ask for me from the  
5 owner.  
6

7 Q Were you there when they asked for you?

8 A When they asked the first time I was not there.

9 Q Then they came back a second time?

10 A After they came back and they left a message with  
11 the owner of the store.

12 Q Did you call them back?

13 A No, they came because I told the owner of the  
14 store, I told the owner of the store that I would be there  
15 at that time.

16 Q When they showed you these photographs did they  
17 -- before they showed it to you did they tell you what they  
18 wanted you to do?

19 A Yes.

20 Q Did they tell you that the person who was in the  
21 store earlier the day that the incident happened picture  
22 was in the group of photos?

23 A No.

24 Q Did they say to you somebody we think who did  
25 it is in these photos?

Gonzalez - People - Cross

280

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2

A No.

3

Q Did you at any time describe to the police the

4

man who you say you saw in the store?

5

A More or less I described.

6

Q What did you say he looked like?

7

A He was black, tall, slender and the face not too

8

wide let's say. Nothing else I could say because that is

9

the only thing I could say.

10

Q Did you ever say that he had -- you didn't say

11

anything else; right?

12

A That I can remember, no.

13

Q And when the police came to you did they say that

14

the people in the picture looked like the person you described?

15

A No.

16

Q What did they say about the photos?

17

MS. FREUND: Asked and answered.

18

THE COURT: Overruled.

19

A How is that?

20

Q What did they tell you to do with the photos?

21

A Well, if there was someone that looked like the

22

person that was there at that time in the store.

23

Q And did they say anything else?

24

A No.

25

Q Did they ever tell you what number to pick?

Gonzalez - People - Cross

281

1  
2 A No.

3 Q Did they ever say to you anything about a number  
4 before they showed you this, these photos?

5 A They just told me if it was a person that looked  
6 like the person to show it to him.

7 Q They said if there was a person who looked like  
8 the person who you saw to show it to them?

9 A Yes.

10 Q How long did you look at this before you told  
11 them?

12 A About one minute or two.

13 Q And what number did you pick out?

14 A The two.

15 Q On that day when you picked out number two were  
16 you sure that was the person?

17 A I was sure that it was the person that went to  
18 the store.

19 Q Do you see a lot of people in that store?

20 A How?

21 Q Do you see people in the store?

22 THE COURT: I would assume the store, that  
23 late in the morning there weren't people in the  
24 store. Objection sustained.

25 MR. SEGAL: Objection, your Honor.

Gonzalez - People - Cross

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1 Q After you picked out number two did you say any-  
2 thing to the police?  
3

4 A After what?

5 Q Did you say anything else after you picked out  
6 number two?

7 A No.

8 Q Did they say anything to you?

9 A They perhaps that they were going to give me an  
10 appointment again to come to see the lineup.

11 Q Did you go to see the lineup?

12 A When they came to get me, yes. I came.

13 Q And when you went to the lineup did you remember that  
14 you had picked out number two?

15 A Yes.

16 Q And when you were being driven to the lineup did  
17 the police tell you what you have to do?

18 A Well, they told me not to be afraid that I was  
19 going to look at the people that were in there but they  
20 were not going to see me, that if I was sure of the person  
21 that I had selected of those that were there.

22 Q And when you looked at the lineup you picked out  
23 a number; is that right?

24 A No. I saw the person that -- yes had gone to  
25 the store.

Gonzalez - People - Cross

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Q And do you remember what number the person was?

A Two.

Q That was just like the two in the photo?

MS. FREUND: Objection.

THE COURT: Sustained.

Q When you looked at the people in the lineup it is fair to say that you remembered that the picture that you picked out a few days before was number two?

MS. FREUND: Objection.

THE COURT: Sustained.

Miss Gonzalez you picked out number two in the lineup?

THE WITNESS: Yes.

THE COURT: Did you pick out number two at the lineup because you had picked out number two in the photo array?

THE WITNESS: No because it was the same person that had gone to the store.

Q After you picked that number two did the police say anything to you about it?

A The same that I said before that perhaps they were going to give me an appointment to call me again.

Q How long did it take for you to pick out the person in the lineup?



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Middleton - Defense - Direct

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THE COURT: Any redirect?

MS. FREUND: No, nothing.

THE COURT: Thank you.

(Whereupon the witness is excused.)

Mr. Segal, I will see counsel inside for a moment.

(Discussion held off the record in the court robing room between the Court, Ms. Freund and Mr. Segal.)

T A J I M I D D L E T O N, called as a witness on behalf of the Defendant, having first been duly sworn, testified as follows:

COURT OFFICER: The witness states her name as T-a-j-i M-i-d-d-l-e-t-o-n, resident of Bronx County.

Please keep you voice loud and clear.

DIRECT EXAMINATION

BY MR. SEGAL:

Q Miss Middleton, how old are you?

A Twelve.

Q And going back to June 27th or 28th, 1980

THE COURT: 28th?

Q June 28th, 1984, were you at 1330 Webster Avenue?

A Yes.

# **EXHIBIT D**

Newbert - People - Direct

23

the 23rd?

MS. FREUND: I am going to ask this be deemed marked People's 3 for identification.

THE COURT: All right.

(Photo array deemed marked as People's Exhibit No. 3 for identification purposes.)

Q I will ask if you recognize what that is?

A Yes. This is a photo array.

Q Is that the photo array that you showed to Miss Gonzalez?

A Yes, it is.

MS. FREUND: At this time, Your Honor, I ask that be deemed marked People's 3 in evidence.

THE COURT: Show it to Mr. Segal.

COURT OFFICER: (Handed to Mr. Segal.)

MR. SEGAL: I have no objection.

THE COURT: Without objection, photo array will be received as People's 3 in evidence.

(Photo array deemed marked as People's Exhibit No. 3 in evidence.)

Q Did Miss Gonzalez select a photograph from among the photo array?

A Yes, she did. Number --

Q Would you please tell us who is in the number two

Newbert - People - Direct

24

position in that photo array?

A Alan Newton.

THE COURT: What if anything did you tell  
Miss Gonzalez after she selected number two?

THE WITNESS: I didn't ---

MS. FREUND: Your Honor, if I may.

Q Who was number two in that photo array?

A Alan Newton.

Q And did you say anything else to her after she  
a photograph?

A I just asked her if she were sure and she said  
"Yes."

Q And did you make a notation on this photo array  
to designate the number that was selected?

A I asked her to sign the photo array.

Q Did she in fact sign that photo array?

A A Yes, she did.

Q I will direct your attention to the 28th of June,  
1984, at approximately one o'clock in the afternoon.

THE COURT: What date is this?

MS. FREUND: 28th of June, 1984.

Q (continuing) at approximately one o'clock in the  
afternoon. Did you conduct a lineup at that time, Detective?

A Yes, I did.

# **EXHIBIT E**

People - Direct

160

1  
2 police officers, Jo Ann and the other guy, the other cop  
3 picked me up at the hospital and took me right to the police  
4 station.

5 Q What, if anything, did Detective Newbert say to  
6 you before you looked at the lineup?

7 THE COURT: Or the other officer.

8 THE WITNESS: Excuse me?

9 THE COURT: Or the other officer? In other  
10 words they took you in a police car; right?

11 THE WITNESS: It was a detective's car.

12 THE COURT: Detective car, you and the two  
13 officers?

14 THE WITNESS: Yes.

15 THE COURT: What if anything did either of  
16 the officers say to you in route from the hospital  
17 to the precinct? Did they tell you where you were  
18 going?

19 THE WITNESS: Yes, they told me that I was  
20 going to view a lineup.

21 THE COURT: What else did they tell you, if  
22 anything?

23 THE WITNESS: They didn't say anything else  
24 until I got to the --

25 THE COURT: Lineup?

[REDACTED] - People - Direct

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THE WITNESS: Yes.

THE COURT: Did either officer tell you that they had arrested the person whose picture you had picked out?

THE WITNESS: No. They didn't.

THE COURT: Did either officer tell you that the person whose picture you picked out would be one of the persons on the lineup?

THE WITNESS: No, they didn't.

Q Did either Detective Newbert or someone else speak to you before you looked at the lineup?

A Yes.

Q And what, if anything, did they tell you?

A She told me not to be afraid and that if I see the person that assaulted me, don't be afraid, to tell them, to let them know.

Q Did she -- withdrawn.

Do you know who went with you into the viewing room to view the lineup?

A The two officers that picked me up at the hospital.

Q And what, if anything, happened when you got into the viewing room?

A Well, I wasn't able to see the mirror, through the window because I was too short and I was hurting and



1 [REDACTED] - People - Direct

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2 they had to help me to look up, you know, into the mirror  
3 to see.

4 THE COURT: Put you on a platform?

5 THE WITNESS: Yes.

6 THE COURT: All right. Then the shade  
7 went up?

8 THE WITNESS: Yes.

9 THE COURT: And then what if anything happened  
10 after the shade went up?

11 THE WITNESS: I just saw the guys sitting  
12 there.

13 Q Did you select a number out of that lineup?

14 A Yes, I did.

15 Q And what number did you select?

16 A Number five.

17 Q Going to show you that which has been marked  
18 People's 5 and ask you if you recognize it?

19 COURT OFFICER: (Handed to witness.)

20 A Yes, I do.

21 Q And what do you recognize it to be?

22 A The guy that assaulted me.

23 Q What is that a picture of?

24 A The lineup.

25 Q What if anything happened after you picked out

# **EXHIBIT F**

Newbert - People - Cross

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A Yes.

Q And this is Miss Gonzalez's signature on the back of this?

A Right.

Q And the next time you see Miss Gonzalez is after the lineup; is that correct?

A Yes.

Q That is 1:00 p.m.?

A Yes.

Q What do you tell -- does she come to the precinct for herself or does somebody get her?

A We pick her up.

Q And do you -- who picked her up by the way?

A I did and Detective Galligan.

Q Did you tell her she was going to view a lineup?

A Yes.

Q And did you tell her the purpose of a lineup?

A I said it was to identify, it was to identify a particular -- any particular person and that I would, you know, we would ask, we asked her if she would mind viewing a lineup and she was a little reluctant. She didn't want to and she said she would.

THE COURT: Did you call her first?

THE WITNESS: I don't know if I called her first.

Newbert - People - Cross

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THE COURT: You went over to the store?

THE WITNESS: Right.

THE COURT: Pick her up?

THE WITNESS: Uh-huh.

THE COURT: Did you tell her in words or substance, you know, that the fellow's picture you picked yesterday, well we just arrested him this morning?

THE WITNESS: No.

THE COURT: Going to put him in a lineup. We want to see if you can pick him out of the lineup?

THE WITNESS: No.

THE COURT: Did you tell him that Mr. Newton had been arrested?

THE WITNESS: No.

THE COURT: Did you tell her the person whose picture she picked out had been arrested?

THE WITNESS: No.

Q Did you remind her that number two was the individual she picked out of the photo array?

A No.

Q When she viewed the lineup Mr. Newton was number two; correct?

A Yes.

Q Who picked number two or Mr. Newton?